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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1149th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 July 1992, at 10.30 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 11 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the forty-fifth session of the Human Rights Committee.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

2. Mr. BLANÇA (Under-Secretary-General for Human Rights) said that he was both honoured and pleased to be able to address the Committee and welcome its members on the occasion of its forty-fifth session, which was the first opportunity he had had of meeting them as a group since taking up his duties as Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights. As the body responsible for monitoring the International Covenant on Civil and Political Rights, the Committee was one of the pillars of the International Bill of Human Rights, and a basic component of the universal protection machinery created by the founders. He took and would continue to take a constant interest in the Committee's activities and assured its members of his unwavering personal support.

3. The Committee had always been a very dynamic body which had blazed a trail for other organs responsible for the implementation of international human rights treaties. At its recent spring session, the Committee had decided to change its methods of work under article 40 of the Covenant. The adoption of specific comments on each reporting State filled a gap in the system of international human rights instruments. Henceforth, both reporting delegations and governmental and non-governmental observers would be apprised of the opinion of the Committee as a whole on the human rights situation in the country concerned. Even more important in his view was the fact that the suggestions and recommendations made would enable the national authorities responsible for implementing the Covenant to carry out their task more efficiently and thereby to make progress towards the objective they had set themselves when ratifying that fundamental instrument.

4. Turning to developments since the end of the Committee's spring session, he welcomed the fact that the international community's efforts to universalize the Covenant through the world campaign for human rights were clearly beginning to reap their reward. Since the beginning of the previous session, no fewer than nine States had ratified or acceded to the Covenant: in chronological order, Benin, Côte d'Ivoire, Latvia, Seychelles, Guatemala, Cambodia, the United States of America, Paraguay and Switzerland, which brought the number of States parties to the Convention to 111. Furthermore, Benin, Bulgaria, Cyprus and Seychelles had acceded to the first Optional Protocol, and Switzerland and the United States of America had made the declaration under article 41 of the Covenant. Within the last two years, 20 States had become parties to the Covenant, or five times more than during

the previous two years, an achievement which should encourage all concerned to redouble their efforts to make the Covenant and the other international human rights instruments, fully universal.

5. Since the spring session of the Human Rights Committee, the Committee against Torture had held its eighth session and considered the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Commission on Human Rights had decided by resolution 1992/43 to begin work on the preparation of such a draft by setting up an intersessional working group and requesting the views of various bodies, including the Committee against Torture. The ultimate aim was to establish a universal preventive system of inspection of places of detention, such as already existed at the European level.

6. Preparations for the World Conference on Human Rights were making good progress. The General Assembly had recently decided that the Conference would be held in 1993 in Vienna, Austria, probably from 14 to 25 June; it would be preceded by three days of informal consultations. The third session of the Preparatory Committee would take place from 14 to 18 September 1992 with the main aims of finalizing the provisional agenda for the Conference, adopting the provisions of its rules of procedure left pending from the second session, and considering the studies in preparation for the Conference. Parallel regional meetings were to be held in Bangkok, from 12 to 16 October 1992, Tunis, from 2 to 6 November, and San José, from 30 November to 4 December.

7. The fourth meeting of Chairpersons of the human rights treaty bodies would be held in Geneva from 12 to 16 October 1992. Its agenda would include the usual matters relating to improved coordination of the work of those bodies, and greater cooperation on means to overcome impediments to the smooth operation of procedures, such as failure to meet reporting deadlines and the financial difficulties of some committees. It would also provide the last opportunity for the committees to coordinate their activities before the World Conference. The Commission on Human Rights had, furthermore, recommended that the meeting should devote part of its work to the question of reservations to international instruments.

8. The Centre for Human Rights had continued its efforts in the field of advisory services and technical assistance by organizing several seminars and training courses with the invaluable collaboration of several members of the Human Rights Committee. A training course on international human rights standards had been held in Swaziland in May, and one on the preparation of reports for submission under the various international human rights instruments would shortly be held at Teheran. The Islamic Republic of Iran had recently submitted its report to the Human Rights Committee, and the training course would enable participants to become more familiar with the Committee's procedures.

9. The Commission on Human Rights had, in resolution 1992/80, also invited the human rights treaty bodies to make suggestions and proposals for carrying out the advisory services programme. The Committee and the meeting of

chairpersons might try further to define the role that the human rights treaty bodies could play in the system of providing advisory services and technical assistance to States parties expressing a need for it.

10. The proposal to create a post of director of the Centre for Human Rights, which had been endorsed by the General Assembly, had now come to fruition, the Secretary-General having appointed Mr. Ibrahim Fall, Agrégé de Droit, Professor in the University of Dakar and Dean of the Faculty of Law. Mr. Fall, who would be taking up his duties on 1 August 1992, had been Minister for Higher Education and Minister for Foreign Affairs of his country for five and a half years.

11. He assured members of the Committee once again of the support of the Secretariat as a whole and of his in particular in the conduct of their work.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/78)

12. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

13. The CHAIRMAN drew the attention of Committee members to the draft programme of work, prepared by the Secretariat and himself, which had been circulated in a one-page document without a symbol entitled "Suggested programme of work". It should be noted that the report of Burundi, originally scheduled for consideration at the current session, was not included in the programme as the State party had asked for it to be postponed until the autumn session. The suggested programme was obviously flexible and could be modified as appropriate in the course of the session.

14. Mr. El SHAFEI wondered whether the two meetings set aside for adoption of the Committee's report on the afternoon of 30 July and the morning of 31 July were sufficient, and whether provision should not be made for a third.

15. The CHAIRMAN proposed that the order of work for the two meetings on Thursday, 30 July should be inverted, with the adoption of the report being taken up at the morning meeting and communications at the afternoon meeting, on the understanding that it would always be possible to continue the adoption of the report at the afternoon meeting if necessary.

16. It was so decided.

17. The programme of work, as amended, was adopted.

18. The CHAIRMAN invited the Chairman/Rapporteur of the Working Group on Communications to submit his oral report.

19. Mr. SADI (Chairman/Rapporteur of the Working Group on Communications) said that the Working Group, consisting of Mr. Prado Vallejo, Mr. Mavrommatis, Mr. Ndiaye, Mr. Pocar and himself, had held four productive meetings from 6 to 9 July and had enjoyed good working conditions, having received their

documents in good time. The Working Group had considered 17 draft recommendations, relating to five decisions on admissibility, five decisions on inadmissibility, six decisions concerning views adopted by the Committee and one decision under rule 91 of the rules of procedure. It had not been possible to consider the drafts of two further sets of views, since the Working Group had not had the text in all languages. It would, accordingly, be necessary to hold another short meeting.

20. The CHAIRMAN said that efforts would be made to find a time when the Working Group could meet.

21. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that the Working Group, composed of Mr. Aguilar Urbina, Mr. Ando, Mr. Pocar and himself, had held four fruitful meetings during which it had drawn up the lists of issues to be taken up in connection with the consideration of the periodic reports of Belarus and Mongolia. It had also considered draft general comments on articles 18 and 25 under article 40 (4) of the Covenant. The draft general comment on article 18 was now complete and would be submitted to the Committee at the current session. Unfortunately, the Working Group had not had time to complete its consideration of the draft general comment on article 25; that task would fall to the next Working Group, which would meet before the forty-sixth session and would have before it the comments of the current Working Group based on the first reading of the draft.

22. The Working Group had also considered a request from Austria for the Committee to provide an opinion or comments on the reservations which Austria had entered to the Covenant. The Working Group had gone into the issue in detail; it would inform the Committee of its views about the Committee's competence in the matter and would submit a draft text for possible use by the Committee if it decided to draw up comments for the State party concerned.

23. Mrs. HIGGINS asked, without prejudice to any decision which the full Committee might take, whether the Committee's workload would allow it to consider the draft recommendation to be submitted by the Working Group.

24. The CHAIRMAN said that the matter could be considered on 24 July, at one of the meetings devoted to general comments, the World Conference on Human Rights and organizational and other matters.

25. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that the list of issues to be taken up in connection with the consideration of the report of Belarus called for some explanations. The members of the Working Group, aware that many important events had taken place in Belarus since the submission of the report (CCPR/C/52/Add.8), and in the light of the experience gained from other countries in a similar situation, had endeavoured to draw up the list in such a way as to encourage the delegation to provide information on the new situation in the country. A great many questions had occurred to them, and they had deliberately limited the number in order to promote a fruitful dialogue. He asked the members of the Committee not to suggest any new questions unless they were of paramount importance.

26. The CHAIRMAN invited the members of the Committee to comment on the list of issues section by section. Section I read:

"I. Constitutional and legal framework within which the Covenant is implemented; right to self-determination; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (articles 1, 2, 3 and 27)

(a) Please clarify the legal and practical consequences of the dissolution of the Soviet Union and the establishment of the Commonwealth of Independent States on the implementation of the rights set forth in the Covenant and their enjoyment by individuals. In particular, what is the status of former Soviet Union legislation in the field of human rights and have there been any changes as to the remedies available to persons claiming a violation of their rights under the Covenant as well as in the status of the Covenant in domestic law?

(b) What has been the impact on the actual implementation of the Covenant of the adoption of the Act on the Status of Judges of 4 August 1989, the Contempt of Court Act of 2 November 1989, and the Foundations of Legislation on the Judicial System of 17 November 1989 (paras. 50 to 58 of the report)?

(c) Does Belarus intend to sign and ratify the first Optional Protocol to the Covenant?

(d) Please elaborate on the new systems of power being established both nationally and locally, in provinces, cities and rural areas (para. 84 of the report).

(e) What measures have been taken or contemplated to ensure consistency between any new constitutional provisions or other legal instruments and the Covenant?

(f) Please comment on what improvements, if any, have occurred in the situation of minorities since the consideration of the second periodic report. Please provide statistical data on minorities described in the Covenant.

(g) Please elaborate on the activities undertaken to enhance the role and status of women during the reporting period, particularly by the women's councils mentioned in paragraph 29 of the report."

27. Mr. SADI suggested that the words "in Belarus" should be added at the end of the first sentence of paragraph (a) which, in his opinion, was drafted too broadly. It seemed to him that the Committee wanted to know the legal and practical consequences of the dissolution of the Soviet Union for individuals in Belarus, rather than in the other States of the former Soviet Union.

28. Mr. MULLERSON fully endorsed the proposed amendment. He noted that paragraph (c), which asked whether Belarus intended to ratify the first Optional Protocol to the Covenant, raised the complex issue of succession of States in respect of treaties. Most of the States to emerge from the dissolution of the Soviet Union probably considered themselves to be its successors, and therefore saw no need to ratify an instrument to which the Soviet Union had been a party. He suggested that the Committee should ask the Belarus delegation whether Belarus considered itself bound by the Soviet Union's accession to the Optional Protocol.

29. The CHAIRMAN pointed out that the Byelorussian SSR had been a party to the Covenant as a State distinct from the USSR and that, consequently, the Committee was entitled to ask it whether, as a signatory to the Covenant, it intended to ratify the Optional Protocol.

30. Mr. MULLERSON said he was aware that the Byelorussian SSR and the Ukrainian SSR had acceded to the Covenant independently from the USSR. Nevertheless, that did not mean that the two countries were not bound by obligations under the treaties ratified by the USSR.

31. Mr. HERNDL agreed with the proposal to change the wording of paragraph (c), but considered that Mr. Müllerson's suggestion was not neutral or objective enough; indeed, it plunged the Committee straight into the debate on succession of States in respect of treaties, which was just what it wanted to avoid. It would be preferable to use wording which would allow the delegation to explain itself, such as: "What is the position of Belarus regarding the first Optional Protocol to the Covenant?".

32. In reply to a question by Mr. PRADO VALLEJO, Mr. AGUILAR URBINA explained that, in the Spanish version of the list of issues, the paragraphs were in the wrong order, with paragraph (d) being the equivalent of paragraph (b). The second paragraph (a) was really paragraph (b), and the present paragraph (d) should be replaced by the text of the present paragraph (b).

33. Mr. WENNERGREN stressed the problems arising from the fact that the report before the Committee (CCPR/C/52/Add.8) dated from 1990, because the list of issues had mostly been derived from that report. The Committee should try to reword certain questions in order to obtain information about any new legislation adopted since the dissolution of the USSR. Accordingly, the Committee should expand the second sentence of paragraph (a), not only inquiring about the status of the legislation of the former Soviet Union, but also asking what new laws had been promulgated in Belarus to replace Soviet legislation.

34. The CHAIRMAN noted that, as was the custom, the list of issues had been sent to the Permanent Mission of Belarus, whose delegation was to appear before the Committee at the 1151st meeting. The Committee could make a few changes, but should refrain from completely rewriting the list. He wondered whether Mr. Wennergren's suggestion was not already covered by the second sentence, which asked whether there had been any "changes". In any case, the issue was dealt with later on, under the various articles of the Covenant.

35. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) fully endorsed Mr. Sadi's suggestion that the words "in Belarus" should be added at the end of the first sentence of paragraph (a). With respect to Mr. Wennergren's suggestion, he pointed out that the Working Group had been fully aware of the differences between the current situation and the situation obtaining at the time the periodic report had been prepared and had intended the first question to encourage the delegation to give a general overview of the new situation, while indicating clearly in the second sentence that the Committee wished to be apprised of all the new developments. In any case, everyone expected the delegation to describe in its opening statement the legislative developments which had occurred since the report had been drawn up. There was no need to labour the point.

36. Concerning paragraph (c), the wisest course would be to adopt as neutral a formulation as possible, so as not to be drawn into the debate about succession of States in respect of treaties, however fascinating that debate might be. It would be sensible to allow the State party to explain its position; accordingly, the wording suggested by Mr. Herndl was the best.

37. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to add the words "in Belarus" at the end of the first sentence of paragraph (a) and to replace the question in paragraph (c) by the following question: "What is the position of Belarus regarding the first Optional Protocol to the Covenant?", as Mr. Herndl had suggested.

38. It was so decided.

39. Mr. WENNERGREN said he did not see why the Committee should not ask a question directly, rather than waiting for the delegation to take the initiative in listing developments. Without going into details, the Committee could ask the delegation what was the current situation regarding human rights legislation. Phrased in that way, the question covered the situation concerning the legislation of the former USSR as well as the adoption of any new laws.

40. The proposal was adopted.

41. Mr. SADI said that section I of the list of issues also referred to the right to self-determination and he wondered whether, in the case of a country separating itself from the union to which it had formerly belonged, it would not be appropriate to ask the delegation how the right to self-determination had been exercised. If the Committee did not think it necessary to include such a question in the list of issues, he would put it to the delegation personally.

42. Mrs. HIGGINS pointed out that the question whether self-determination could be exercised in the context of the withdrawal of a country from a union was a highly controversial legal issue. Her own view was that groups living in the territory of an existing Member of the United Nations could not invoke the right to self-determination in order to secede. The right to self-determination covered the right of all individuals to exercise all the

democratic rights and the right to participate in public life. It would be very dangerous - and moreover legally incorrect - for the Committee to give the impression that it considered that the right to self-determination could be interpreted as giving a particular group of persons living in the territory of a Member of the United Nations the right to secede.

43. Section I was adopted, subject to the oral amendments to paragraphs (a) and (c).

44. The CHAIRMAN invited the members of the Committee to comment on section II, which read:

"II. Right to life, treatment of prisoners and other detainees and liberty and security of the person (articles 6, 7, 8, 9 and 10)

(a) What is the current status of planned criminal legislation designed to significantly reduce the number of crimes for which capital punishment can be ordered? (Para. 31 of the report) Please also indicate how often and for what crimes the death penalty has been imposed and carried out since the consideration of the second periodic report of Belarus.

(b) Has any consideration been given in Belarus to the abolition of the death penalty and accession to the second Optional Protocol to the Covenant?

(c) Please provide information on safeguards against torture and other impermissible methods of investigation (para. 37 of the report).

(d) Please elaborate on the changes made to the Code of Criminal Procedure and the Corrective Labour Code relating to the implementation of article 10 of the Covenant (paras. 44 and 45 of the report).

(e) Please describe the conditions of detention in colony-settlements and corrective-labour colonies. Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with in these colonies?

(f) Please provide information on the conditions of persons held in punishment or disciplinary isolation units or in solitary confinement (para. 45 of the report).

(g) Are there penal sanctions which consist only of forced labour and, if so, how is this reconciled with article 8 of the Covenant?

(h) Please provide information on measures taken to restructure the work of the militia and other police organs, with a view to better protecting the interests of the State and rights of the citizens (paras. 40 and 41 of the report).

(i) Please elaborate on the experience to date with the actual implementation of Decrees adopted in July 1987 and January 1988 regulating conditions and procedures for providing psychiatric care (paras. 42 and 43 of the report)."

45. Section II was adopted without change.

46. The CHAIRMAN invited the Committee to comment on section III, which read:

"III. Right to a fair trial (article 14)

(a) Please provide additional information on the right to defence introduced by article 7 of the Foundations of Legislation on the Judicial System of 17 November 1989. In particular, how soon after arrest can a person contact a lawyer and inform his family? (para. 56 of the report)

(b) What measures have been taken to ensure that trials are genuinely public, allowing access to the interested public, including representatives of the local and foreign press?

(c) Please provide further information on the free legal aid system in Belarus."

47. Section III was adopted without change.

48. The CHAIRMAN invited the members of the Committee to consider section IV of the list of issues, which read:

"IV. Freedom of movement and expulsion of aliens, right to be recognized as a person before the law, freedom of religion and expression (articles 12, 13, 16, 17, 18, 19 and 20)

(a) Please elaborate on the restrictions that have been lifted in respect of the right freely to leave and return to the country (para. 48 of the report). What is the current status of the draft Act on entry and departure?

(b) Please provide information on the actual implementation of the Decree of 25 August 1987 relating to measures taken against foreign citizens for preventing infection with the AIDS virus, particularly as to required medical examinations and appropriate coercive measures (para. 49 of the report).

(c) Please provide information concerning the law and practice relating to permissible interference with the right to privacy.

(d) Please elaborate on limitations, if any, on freedom of conscience and religion (para. 60 of the report).

(e) With regard to paragraphs 62 to 65 of the report, please elaborate on the situation in Belarus of the right to seek, receive and impart information and ideas of all kinds.

(f) How is the nationality of Belarus acquired by former citizens of the USSR and their descendants? Is there a danger that the number of stateless persons would increase? What is the understanding of the Government of Belarus of article 16 of the Covenant and why is there no reference to it in the report?

(g) Is conscientious objection to armed service to erated and regulated by law?"

49. Mrs. HIGGINS proposed that the words "and content" should be added to the second sentence of paragraph (a).

50. Mr. MULLERSON said he fully supported Mrs. Higgins' proposal.

51. The proposed amendment was adopted.

52. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) thought that the first sentence of paragraph (a) should be deleted, given the changed situation in the country since the report had been prepared. He noted that the paragraph's second question, as expanded by Mrs. Higgins, should allow the Committee to obtain information on the specific provisions of the draft Act.

53. The proposed amendment was adopted.

54. Mr. PRADO VALLEJO said that, in his view, it was important to know what legal principles and norms governed the acquisition of the nationality of Belarus. The first question in paragraph (f) should therefore be reworded.

55. Mr. WENNERGREN thought that paragraph (f) should refer not to the nationality of Belarus but rather to citizenship of Belarus. He pointed out that many problems had arisen in former Republics of the Soviet Union where, at the time of independence, the members of certain ethnic groups, though nationals of the new State, had not become full citizens.

56. Mr. MULLERSON agreed with Mr. Wennergren. Subject to that amendment, he thought that the first question in paragraph (f) fulfilled Mr. Prado Vallejo's wishes and did not need to be made more specific.

57. Miss CHANET said she also thought that the term "nationality" in paragraph (f) should be replaced by "citizenship". Having said that, she wondered whether the third question of the paragraph, which related to article 16 of the Covenant, was appropriate. That article concerned the right to recognition as a person before the law and was not really related to nationality. In her view, if the Committee wanted to raise an issue under article 16 it should not do so in paragraph (f).

58. Mr. PRADO VALLEJO drew attention to a number of difficulties in the Spanish version of the list. For example paragraph (b) should refer to nationals rather than citizens. In Latin America, the two concepts covered two very different states of affairs. He explained that, in that part of the world, citizenship was acquired automatically at the age of civil majority.

59. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that, in his view, only paragraph (f) raised a problem. Though he would not object to replacing the term "nationality" by "citizenship", he would prefer to retain the former. By referring to "citizenship", the Committee might give the impression that it was embracing the views of certain ultranationalists in Eastern Europe who currently placed a very special interpretation on a term that was perfectly clear in international law.

60. Regarding the request in paragraph (f) for further information in connection with article 16 of the Covenant, he recalled that some reporting countries had sometimes dealt with the question of descendants' acquisition of nationality within the framework of article 16. The question of nationality was of course of great importance in the context of human rights. However, the Committee could not approach the matter by invoking any article of the Covenant because the Covenant did not contain any provisions regarding nationality. The reference to article 16 could be one way of doing so, among others, but if the members of the Committee considered that the link thus established between the article and the question of the right to nationality was too artificial, the third sentence of paragraph (f) could be deleted or could be made into a new paragraph.

61. Mr. WENNERGREN said he would prefer the Committee not to refer to the right of nationality, but to adhere to the terms of the Covenant, which made no specific provision for that right.

62. Miss CHANET said that, having listened to Mr. Dimitrijevic, she was somewhat anxious as to the conclusions that might be drawn from a reading of paragraph (f): the Committee could be suspected of considering that the right to recognition as a person before the law, within the meaning of article 16 of the Covenant, included the right of nationality, which was not guaranteed by the Covenant. If members of the Committee wished to raise any question concerning article 16, that should not be done under paragraph (f).

63. Mr. MULLERSON submitted that, in so far as the rights of citizens were dealt with in the Covenant (art. 25), it might be wise to adhere to the terms of the latter, and preferable to speak of citizenship rather than nationality under paragraph (f). Moreover, in Belarus as in all the other former republics of the USSR, "citizenship" and "nationality" signified two very different things. In the present instance, and to avoid any misunderstanding, the former term should be employed.

64. Mr. AGUILAR URBINA endorsed Mr. Prado Vallejo's suggestion concerning the amendment of the Spanish text of the list of issues, adding that he would welcome clarification from Mrs. Higgins concerning the meaning of the terms "nationality" and "citizenship", and their use in legal language in the English-speaking countries. He himself understood that the right of nationality implied recognition of a person's status as a national of a given State, whereas citizenship involved political rights as set out under article 25 of the Covenant.

65. Mrs. HIGGINS said that the difference was not a matter of language. After listening to the previous speakers, she realized that in the Commonwealth countries, the two terms signified virtually the opposite of what they did in the countries of the former USSR. To avoid any confusion and take account of different realities, she would propose that the first question under paragraph (f) should be formulated to read: "How is the citizenship and nationality of Belarus acquired by former citizens of the USSR and their descendants?" She added that if reference was made only to citizenship, the second question would be pointless, because not being a citizen of a State did not necessarily render a person stateless. Further, it would be advisable to delete the final question, which reflected as it were an abstract interpretation of article 16 of the Covenant. Lastly, she agreed with Mr. Prado Vallejo concerning paragraph (b), and proposed that in the English text the words "foreign citizens" should be replaced by "foreign nationals", the other language versions being, if necessary, brought into line.

66. The proposed amendments were adopted.

67. Section IV, as orally amended, was adopted.

68. The CHAIRMAN invited the members of the Committee to consider section V of the list of issues, which read:

"V. Freedom of assembly and association and right to participate in the conduct of public affairs (articles 21, 22 and 25)

(a) What have been the results of the discussion on 'improving the legal regulation of conditions and procedures for holding peaceful assemblies, processions and demonstrations' (para. 69 of the report)?

(b) Please provide information on the laws and regulations governing the right to strike. What is the practice in this regard?

(c) Please provide information on the laws and regulations governing the founding, registration and financing of political parties. Are there any parties active and when are multi-party elections at the State and local level to be expected?"

69. Mr. SADI suggested that in paragraph (c), the Committee might ask when the next general elections would be held in Belarus.

70. Mr. WENNERGREN submitted that the question posed in paragraph (a) referred to a state of affairs that had come to an end with the break-up of the USSR. It was the situation since independence and the present state of discussions on issues under articles 21, 22 and 25 that interested the Committee.

71. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that, although the Working Group had frequently been tempted to draft questions unrelated to the report of Belarus, which was in many

respects obsolete, it had to the extent possible refrained from doing so. It was nevertheless clear that paragraph (a) had been drafted by the Working Group with the aim of determining whether discussions were currently under way.

72. He was not sure that he had fully understood Mr. Sadi's remarks, since paragraph (c), to his mind, addressed the issue of future elections.

73. Mr. WENNERGREN suggested that "what have been the results of the discussion", in paragraph (a) might be replaced by "what has become of the results of the discussion", and proposed that a further question should be added to read "and what further steps have been taken since then".

74. The CHAIRMAN said he believed the Committee as a whole endorsed the addition proposed by Mr. Wennergren.

75. The proposed amendment was adopted.

76. Section V, as orally amended, was adopted.

77. The list of issues to be taken up in connection with the consideration of the third periodic report of Belarus, as orally amended, was adopted.

78. The CHAIRMAN invited the Committee to consider and adopt the list of issues to be taken up in connection with the consideration of the third periodic report of Mongolia (CCPR/C/64/Add.2).

79. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) remarked that during the drafting of the list, the State party had informed the Working Group that in view of new events, both national and international, it was willing to submit a revised report. However, time constraints had obliged the Working Group to base itself on the original report in drawing up the list. At all events, the Mongolian delegation would undoubtedly make a very detailed statement on the current situation in the country, which the Committee would be able to take into account.

80. The CHAIRMAN invited the Committee to consider and adopt section I of the list, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes (articles 2, 3 and 26)

(a) Has any change in the status of the Covenant within the Mongolian legal system been brought about by the new Constitution? To what extent have the provisions of the Covenant been taken into account in the process of adopting the Constitution and amending legislation (para. 3 of the report)?

(b) Please clarify the relationship between the Great People's Khural, the Little Khural and the President of the Mongolian People's Republic and their respective role in so far as the implementation of the Covenant is concerned (para. 5 of the report).

(c) Has the role of the Procurator's Office changed under the new Constitution and laws?

(d) Please provide information on cases, if any, during the period under review where the provisions of the Covenant were directly invoked before the courts or referred to in court decisions.

(e) What measures have been taken to compensate victims of past violations of human rights? Please comment on the activities of the Commission on the Rehabilitation of Persons Subjected to Unlawful Repression and elaborate on the nature of compensation being offered to citizens who had suffered from damage caused by a wrongful conviction, wrongful prosecution or wrongful detention in custody (paras. 22 and 23 of the report).

(f) Please clarify in which respects the rights of aliens who do not benefit from the special agreements mentioned in paragraph 9 of the report are restricted as compared with those of citizens."

81. Mrs. HIGGINS remarked, in connection with paragraph (b), that the Little Khural had been of brief duration, and appeared no longer to exist.

82. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that that was one of the developments which had occurred after the Working Group had already drawn up the list on the basis of the original report. A new Constitution had indeed been adopted, and the Working Group had taken steps to determine what changes had taken place in the functioning of the country's institutions. It seemed that the Little Khural was still in existence, but under another name. To be on the safe side, the Committee might refer, in paragraph (b), to the relationship between the supreme legislative and executive organs under the Constitution and their respective roles in so far as the implementation of the Covenant was concerned.

83. Mr. ANDO remarked that the Working Group had only received the new Constitution on the day it had begun its work, and had thus had to base itself on information in the original report. The Mongolian delegation would doubtless be able to correct any inaccuracies when presenting the Government's report to the Committee.

84. Mr. EL SHAFEI argued that it would be clearer and more exact to ask, in the second part of paragraph (a), to what extent the provisions of the Covenant had been taken into account "in the formulation of the new Constitution", rather than "in the process of adopting the Constitution", an expression which could give rise to confusion.

85. The amendment by Mr. El Shafei to paragraph (a) and that by Mr. Dimitrijevic to paragraph (b) were adopted.

86. Section I, as orally amended, was adopted.

87. The CHAIRMAN invited the members of the Committee to consider and adopt section II of the list, which read:

"II. Right to life, treatment of prisoners and other detainees and liberty and security of the person (articles 6, 7, 9 and 10)

(a) What are the rules and regulations governing the use of firearms by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures have been taken to prevent their recurrence?

(b) Please clarify the statement in the report that the death penalty has been established as 'an alternative to imprisonment for varying terms, not as the primary but as a secondary option' (para. 14 of the report).

(c) How often and for what crimes has the death penalty been imposed and carried out since the consideration of Mongolia's second periodic report?

(d) Has any consideration been given to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant?

(e) With reference to paragraphs 42 and 43 of the report, please provide information on action taken to make the Corrective Labour Code more humane and to bring the penitentiary system in line with the commitments entered into by Mongolia under international conventions and agreements on human rights.

(f) Please clarify the legal value of testimony extracted through violence or insulting treatment (para. 18 of the report).

(g) Please elaborate on the plans being made to introduce new legal provisions which will strengthen and guarantee the right to liberty and security of the person (para. 21 of the report)."

88. Section II was adopted.

89. The CHAIRMAN invited the members of the Committee to consider and adopt section III of the list, which read:

"Right to a fair trial (art. 14)

(a) In view of the statement in paragraph 50 of the report that Mongolian legislation should to a greater degree reflect article 14 of the Covenant, please provide information on any shortcomings in Mongolian legislation in that regard as well as on any steps being taken to overcome them.

(b) How is the independence and impartiality of the judiciary guaranteed?

(c) Please provide information on the defence's rights and the availability of free legal assistance to criminal defendants."

90. Section III was adopted.

91. The CHAIRMAN invited the members of the Committee to consider and adopt section IV of the list, which read:

"IV. Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participate in the conduct of public affairs, and rights of persons belonging to minorities (articles 12, 13, 17, 18, 19, 20, 21, 22, 25 and 27)

(a) Please clarify the current standing of the bill governing departure from the country by Mongolian citizens and entry into the country by foreigners (para. 45 of the report).

(b) Please clarify the compatibility with article 12 of the Covenant of the grounds for refusing an exit visa mentioned in paragraph 46 of the report. What are the possibilities of appeal against such decisions?

(c) Please explain the procedures leading to an expulsion order and the remedies available to the individuals concerned.

(d) With reference to paragraph 57 of the report, please provide information on the constitutional provisions relating to the right to privacy and on the process of review of the Civil Code with the intention to strengthen that right.

(e) Please provide information on the status of the bill on the right to freedom of religion currently in preparation.

(f) Please provide information on any restrictions to the freedom of assembly and association of religious communities, the use of places of worship, the publication of religious material or to the liberty of parents to ensure the religious education of their children.

(g) What is the status of the preparation of the new press law?

(h) Please elaborate on the criteria used in prohibiting public meetings and on the recourse available against such decisions (see para. 64 of the report).

(i) Please provide information on the procedure for registering new political parties. Please also provide information on new legislation allowing trade union pluralism and its effects.

(j) What factors and difficulties, if any, exist with respect to the implementation and enjoyment of the rights under article 27 of the Covenant? What is the size of the different minority groups in Mongolia and how are the rights of such groups under article 27 of the Covenant guaranteed?"

92. Mr. MULLERSON thought that it would be preferable, in paragraph (a), to replace the phrase "the bill governing departure from the country by Mongolian citizens" by the phrase "the bill governing the right of Mongolian citizens to leave the country".

93. Mrs. HIGGINS noted that the Committee was again confronted with the problem of the distinction between citizens and aliens, as though the rights of the one were different from those of the other. She would like the Committee to keep to the wording of article 12 of the Covenant, which stated that "everyone" was free to leave any country, including his own.

94. Mr. ANDO, supported by Mr. AGUILAR URBINA, thought it would be sufficient to delete the reference to "citizens" and simply refer to Mongolians.

95. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) reminded the members of the Committee of the pernicious effects of the nationalistic fervour that had recently manifested itself in Eastern Europe and in many countries once part of the former Soviet Union. The Committee should be careful not to refer only to Mongolians, thus neglecting the rights of persons of other ethnic groups living in Mongolia. In the case in point, it would certainly be preferable to abide by the terms of article 12 of the Covenant as closely as possible, while limiting the question at issue to that of the exercise of the right to leave and enter Mongolia. It looked as though the Committee would be called upon to discuss that type of question more and more frequently in future, and it would be advisable to envisage preparing another general comment on the way in which the concepts of foreigner and nationality should be understood within the meaning of the Covenant, thus enabling the Committee to contribute to clarifying a number of important points of international law.

96. Mr. HERNDL emphasized, in connection with paragraph (a), that in his understanding the relevant paragraph of the report was not 45 but 48. Also, in his view, it would be better to avoid any reference to a bill whose scope was not very clear and instead request the Mongolian delegation to provide the necessary information regarding the legislation actually in force. He also thought it would be preferable to keep to the wording of article 12 of the Covenant.

97. Mrs. HIGGINS proposed that the Committee should adopt a formulation similar to that approved for Belarus. Paragraph (a) could read: "What is the current status and content of the legislation on the right to enter and leave?"

98. Mrs. Higgins' proposal was adopted.

99. Part IV, as orally amended, was adopted.

100. The list of issues to be taken up in connection with the consideration of the third periodic report of Mongolia (CCPR/C/64/Add.2), as orally amended, was adopted.

101. Mr. WENNERGREN asked whether a member of the Committee had been appointed to draft the Commitee's final comments on the consideration of the initial report of the Republic of Korea.

102. The CHAIRMAN said that Mr. Dimitrijevic, Mr. Ando and Mr. Aguilar Urbina had already been appointed to draft the final comments for Belarus, Mongolia and Peru, respectively. He proposed that Mr. Herndl should be made responsible for drafting the Committee's final comments on the report of the Republic of Korea.

103. It was so decided.

The meeting rose at 12.55 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1150th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 July 1992, at 3 p.m.

Chairman: Mr. POCAR

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GE.92-16357/4668B

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of the Republic of Korea (CCPR/C/68/Add.1)

1. At the invitation of the Chairman, Mr. Soo Gil Park, Mr. Bong Joo Moon, Mr. Dal Ho Chung and Mr. Kook Hyun Yoo (Republic of Korea) took places at the Committee table.

2. Mr. Soo Gil PARK (Republic of Korea), introducing the initial report of the Republic of Korea (CCPR/C/68/Add.1), said that his country had acceded to the two International Covenants on Human Rights in 1990 in order to consolidate the protection of human rights in Korea and to join the international effort to promote them throughout the world. The consideration of its initial report was an important event, and he hoped it would lead to a constructive dialogue on how the Republic could better fulfil its commitments under the International Covenant on Civil and Political Rights. The event had already attracted the attention of the media and various human rights groups in his country and would encourage his Government in its firm undertaking to enhance the human rights of the Korean people.

3. Every effort had been made to ensure that the structure and content of the report complied with the Committee's guidelines, and all possible information had been included to provide as full a picture as possible of human rights protection in the Republic of Korea. Since the laws of the Republic were based on the written law system, the emphasis of the report was on legal and institutional aspects, but decisions of the Constitutional Court and other courts, as well as relevant administrative measures, were also mentioned. In view of the fact that major advances in human rights protection had been made since the inauguration of the present Government in early 1988, the report focused on developments since that time.

4. Under the Constitution, as revised on 29 October 1987, institutional measures had been strengthened to embody genuinely democratic principles, and to enhance the protection of human rights and fundamental freedoms. The Korean people regarded the Constitution, based on the 29 June 1987 Declaration for Democracy, as a turning-point in the struggle for democracy. It provided for the election of the President of the Republic by direct popular vote, instead of by indirect vote as previously, thus widening the scope of popular participation. It also strengthened the power of the National Assembly vis-à-vis the administration by, for example, reinstating its power to review the actions of the latter. In the area of justice, it had reinforced the independence of the judiciary by improving the procedure for appointing judges. It had also established the Constitutional Court, which, in addition to reviewing the constitutionality of laws at the request of courts, ruled on petitions by individuals seeking redress of human rights infringements caused by acts of the State. More than 30 cases of infringements had been redressed since the introduction of the system in September 1988 - which represented a significant improvement in the human rights situation. The constitutional provisions dealing with human rights and fundamental freedoms had also been

amended to enhance protection. For example, strict procedures to be followed in the event of arrest or detention had been written into the Constitution, and the rights of criminal suspects and defendants strengthened.

5. To give effect to these constitutional provisions, the relevant laws and regulations had been amended, and the related procedures improved. The Government had also made improvements in the penal administration and had instituted legal aid programmes. In accordance with the spirit of article 10 of the Constitution, assuring the human worth and dignity of citizens, and implying a right to life as affirmed in article 6 of the Covenant, the Government had amended the Special Criminal Act to abolish the death penalty for 15 types of crime. The Government was also undertaking a review aimed at further reducing the applicability of the penalty by amendments expected to be enacted by the end of the current year. The application of the controversial National Security Law and the Act concerning Assembly and Demonstration had also been restricted in order to eliminate misinterpretation or abuse.

6. Local autonomy, which, although written into the Constitution since the birth of the Republic, had not been implemented except for a brief period in the 1960s, had become a reality, and legislative council elections had been held nationwide in March and June 1991.

7. The people of the Republic were now living under the rule of law in a democracy, completely free from the authoritarian tinges of the past. Human rights and fundamental freedoms, including freedom of the press, were guaranteed and safeguarded. Accession to the Covenant had been an important part of those democratic processes. Only a true democracy could open its doors to public scrutiny, and it was to be noted that the Republic of Korea had made a declaration recognizing the competence of the Committee under article 41 of the Covenant and had also acceded to the Optional Protocol. Thus, the human rights of the population were henceforth under international protection, reinforcing the extensive domestic protection provided by the Constitution. Every effort had been made to publicize those international instruments, and the texts had been translated and published in the Korean language, along with a compilation of the Committee's proceedings and important decisions. Measures had also been taken to educate law enforcement officials in the provisions and procedures set forth in the Covenant and in the Constitution. Citizens of the Republic could take special pride in having a whole week set aside for commemoration of the Universal Declaration of Human Rights, and 10 December was celebrated as Human Rights Day in order to remind the people of the spirit of the Universal Declaration and of the rights they enjoyed in a democracy. All the rights provided for in the Covenant were guaranteed by the Constitution, which stipulated that all treaties duly concluded and promulgated should have the same effect as domestic laws. Together, the two instruments formed the centrepiece of human rights law of the Republic, and it was noteworthy that the Constitutional Court had invoked article 18, paragraph 2 of the Covenant in its landmark decision of 1 April 1991 on the constitutionality of a provision of the Civil Code. The Republic did maintain three reservations to the Covenant with regard to specific provisions that conflicted with domestic law, namely article 14, paragraphs 5 and 7 and article 22, but they were only partial in nature and were not intended to disavow the specific rights provided for in the Covenant; they sought only to maintain limitations prescribed in the relevant domestic

laws as explained in the report. His Government firmly believed that the reservations did not represent a derogation from the basic principles embodied in the Covenant, but it was reviewing its position to see whether their scope could be further limited.

8. The admission of the Republic of Korea to membership of the United Nations in September 1991 had given additional momentum to its Government's efforts to promote universal human rights in accordance with the Charter, and by subsequently becoming a full-fledged member of the International Labour Organisation in December 1991, the Republic had strongly endorsed international endeavours to ensure the protection of fundamental trade union rights. The Republic had also ratified the Convention on the Rights of the Child in December 1991 and was shortly to become a party to the Convention relating to the Status of Refugees and its Protocol, pending the consent of the National Assembly. No less importance should be attached to the actions of individuals and groups, and he believed that the increase in the number of human rights cases being brought to the courts was evidence of popular confidence in the fair application of the law. In addition, private human rights groups were increasing their monitoring activity.

9. One of the most important factors affecting the implementation of the Covenant was the tense situation resulting from the division of the Korean peninsula. Following its liberation from Japanese colonial rule in 1945, Korea had been caught between two opposing ideologies, and the Northern aggression in 1950 had brought untold misery upon the Korean people and consolidated the division of the country. Since that war, the two parts of Korea had confronted one another militarily, as well as ideologically, across the 38th parallel. Consequently, it was not until 1991, following the end of the cold war, that the two sides had succeeded in engaging in serious dialogue and begun to seek a way to reunify the nation peacefully. The Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation had been concluded in February 1992 and had led to a series of regular consultations that were expected to narrow the gap between the two Koreas in every field. That was, however, only a cautious first step, and it was natural that a country which had been nearly overthrown by invasion should feel unable to relax its guard against further aggression. Armed forces totalling 1.5 million were in a military stand-off along the 38th parallel, and, despite the end of the cold war, the Armistice Agreement had still not been replaced by a peace settlement. The Republic of Korea was accordingly obliged to guard against subversion of its liberal democratic system. It was very unfortunate that North Korea should still maintain a clause in the preamble of the platform of the Korean Workers' Party, which took precedence over its Constitution, declaring as its basic policy the "realization of the people's revolution for national liberation in South Korea" - in other words, the communization of the whole peninsula. Accordingly, the National Security Law adopted by the Republic to protect its security and the integrity of the system still had its raison d'être. In spite, therefore, of the call in some quarters for abolition of the Law, it was the national consensus that it should be maintained: no democracy could be so tolerant as to allow the forces of revolution to overthrow its free system. It was, however, his firm belief that, when a peace agreement was signed and South-North relations normalized, the National Security Law would become irrelevant. In the meantime, the Government remained determined to eliminate any infringement of

human rights resulting from application of the Law, beyond the restrictions permitted by the Constitution and the Covenant, as was instanced by its incorporation into the Law in May 1991 of the substance of a 1990 Constitutional Court decision limiting its scope. The decision provided clearer and narrower definitions of such concepts as "endangering national security and survival" and "endangering the basic liberal democratic order".

10. As part of its future programme to promote universal human rights, his Government planned to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was also finalizing amendments to the Penal Code and the Code of Penal Procedure to reinforce the principle of nullum crimen sine lege, and to introduce measures for more effective review of warrants. As a new member of the ILO, it was also preparing to accede to various ILO conventions, and it had set up a working group consisting of an equal number of representatives of workers, employers and legal experts to streamline labour-related domestic laws. The group was also considering an amendment to the Labour Union Act to allow multiple unions in a single workplace, which was at present prohibited. The Republic would thus continue its endeavours to improve its institutions and practices relevant to human rights and to incorporate the spirit and principles of the Constitution and the Covenant into the daily life of the people.

11. His Government would also take an active part in promoting human rights at the international and regional levels. It had high expectations of the World Conference on Human Rights to be held in June 1993, in which it was particularly anxious to participate actively as the Republic had been elected to the Commission on Human Rights for a term starting in 1993.

12. He hoped that the explanations and statements given would assist the Committee in understanding the status of the protection of human rights in the Republic of Korea, and he would be pleased to answer to the best of his knowledge any questions which members of the Committee might wish to put.

13. Mr. ANDO congratulated the delegation of the Republic of Korea on the timely submission of its report, which generally followed the Committee's guidelines and, in addition to an account of legislative provisions, gave some useful statistical and factual information. He commended the Republic's decision to accede not only to the Covenant but also to the Optional Protocol and to make the declaration provided for in article 41.

14. Throughout Korea's long history Japan had learnt much from it in the cultural, religious and philosophical spheres. It was, therefore, particularly unfortunate that, as it had become modernized, Japan had adopted aggressive policies which had led to the invasion of Korea in 1905 and colonial domination by Japan from 1910. The division of the peninsula after liberation at the end of the Second World War had been followed in 1950 by the outbreak of the Korean war. He wished to express his deep sympathy with the Korean people over that recent tragic history, and to express his personal sorrow and apology for the role that Japan had played in it.

15. He appreciated the willingness expressed by the delegation to enter into constructive dialogue with the Committee as a contribution to solving any human rights problems that might exist. It was in that spirit that he would

request clarification on a number of matters in the report. The first concerned the statement in paragraph 5 that the Covenant had the same legal effect as domestic laws. If that was so, what occurred when new domestic legislation was enacted? Did such enactment leave room for conflict between the new legislation and the Covenant?

16. Paragraph 29 of the report, referring to article 2 of the Covenant, quoted article 11 (1) of the Republic's Constitution, which prohibited discrimination on grounds of sex, religion or social status. There were, however, other possible grounds for discrimination, such as those enumerated in article 2, paragraph 1 and article 26 of the Covenant, including political opinion. He wished, therefore, to ask whether there were any differences between the grounds for discrimination in the Constitution and the Covenant.

17. Turning to the section of the report relating to article 3 of the Covenant, he welcomed the fact that, by acceding to the Covenant, the Republic of Korea had committed itself to eliminating all discrimination against women. It was, however, a well-known fact that, irrespective of legislative measures, many kinds of de facto discrimination could exist in a society, as was indeed the case in his own country, Japan. He would, therefore, appreciate a brief account of any such de facto discrimination that might exist in the Republic and any affirmative action being taken to eliminate it. In that connection, he noted the statement in paragraph 87 (d) of the report concerning the right of both husband and wife to seek a division of the joint property on the basis of their contribution to its formation, which seemed to imply separation of matrimonial property. But in practice, when two people lived together in marriage, there was bound to be some property held in common between them, and in certain social situations the husband's share was likely to be greater than the wife's. He would therefore like more information about the matrimonial property situation in the Republic of Korea and about any measures to ensure a more equitable balance between husband and wife.

18. In relation to article 4 of the Covenant, the report indicated (para. 89) that article 37 (2) of the Constitution provided for restrictions of freedom and rights in cases of emergency. However, article 4, paragraph 2 of the Covenant laid down that, even in time of public emergency, no derogation was permissible from a number of articles of the Covenant relating to basic rights, and he would welcome information on specific categories of rights from which no derogation was possible under the law of the Republic of Korea.

19. Different aspects of the application of the National Security Law would no doubt be addressed by other members of the Committee. He himself would merely ask, in connection with that part of the report which dealt with the prohibition of torture and cruelty committed in the performance of official duties (art. 7), for additional information on the facts which had led to the Supreme Court decision referred to in paragraph 138.

20. Paragraph 150 of the report, relating to article 9 of the Covenant, noted "a discrepancy between the norms of the Code of Criminal Procedure and the actual practices of investigatory agencies" in the matter of detention. How soon, in fact, after a person had been taken into custody, was his or her family informed?

21. In connection with article 10 on the humane treatment of detained persons, he asked at what age criminal law was applicable in the Republic of Korea. The report (paras. 167 and 206) left some doubt as to the exact definition of "juveniles".

22. The announced liberalization with regard to liberty of movement (art. 12) was to be welcomed. What, however, were the de facto and de jure situations as far as visits to North Korea were concerned?

23. The Republic of Korea, like Japan, had been affected by the arrival of the so-called "boat people". He asked, against the background of article 13 of the Covenant, what legal provisions in the former country affected the admission or expulsion of such persons.

24. Referring to paragraph 204 (b) (iii) of the report, he requested clarification concerning the possible restriction of the right to communicate with counsel, as provided under article 14 of the Covenant.

25. Also in connection with article 14, and more specifically the right to appeal, he noted the reservation made by the Government (para. 211 of the report) on the grounds that "military trials under extraordinary law may not be appealed except in case of death sentences". Why was that right denied in the case of lesser sentences?

26. Freedom of expression in the Republic of Korea obviously remained adversely affected by the very real trauma of the country's recent history, but the amendments to the National Security Law announced in paragraph 247 of the report were a promising sign. Nevertheless, the amended Law, notably its article 7 (5), still seemed too broad in scope and too vague in some of its provisions. Perhaps further review of the situation was called for. He also understood that, together with the application of legal sanctions, attempts were sometimes made to impose the recantation of beliefs: that was certainly in conflict with article 18 of the Covenant, and he invited the delegation of the Republic of Korea to comment on the matter.

27. Welcoming the entry of the Republic of Korea into the International Labour Organisation (ILO), he added that, according to information received, certain private university or school teachers' unions had been dissolved. Freedom of association was thus, perhaps, another matter which merited further review.

28. In relation to article 24 of the Covenant, and paragraph 294 of the report, concerning the protection of working children, he asked for additional information on measures to prevent the employment of children at an age when they should be enrolled in compulsory education.

29. Finally, with regard to article 25, and more particularly the question of restrictions on political rights (para. 308 of the report), he inquired why, inter alia, journalists were prohibited from becoming founders or members of a political party.

30. Mr. DIMITRIJEVIC, welcoming the delegation of the Republic of Korea, commented on the topicality of a report that reflected the conscious efforts

being made in many parts of the world to achieve gradual and peaceful social development in a direction that led away from all forms of authoritarianism, repression and constraint deriving from international circumstances. His chief regret concerning the document before the Committee was that - perhaps understandably in view of their recent promulgation and because of their importance as a foundation for the defence of human rights - it dwelt rather too much on the letter of the new constitutional and legislative provisions and was insufficiently detailed with regard to the factual situation and specific actions to guarantee those rights and eliminate inadmissible practices. The state of affairs with regard to prostitution (para. 67) was a case in point.

31. The statement in article 37 (1) of the Constitution of the Republic of Korea, cited in paragraph 3 of the report, that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution", taken in conjunction with paragraph 5 of the report, was of considerable legal interest. He asked whether such non-enumerated provisions had actually been applied or invoked with the force of domestic laws since the adoption of the present Constitution, and whether the highest judicial bodies of the land had actually read into the Constitution some rights that formed part of the spirit of the times or of natural law.

32. Concerning article 6 of the report and the right to life, he noted from paragraph 101 of the report the provisions according to which criminal punishment, including the death penalty, was enforced in the Republic of Korea. Welcoming the recent limitation of the categories of crimes subject to the death penalty, he added that a cursory reading of the National Security Law led to the conclusion that an inordinate number of offences still carried that penalty, and requested details on the subject. Similarly, and in connection with paragraph 110 of the report, dealing with the subject of abortion, he asked in what circumstances abortion was not considered a crime.

33. With regard to article 7, he requested further information as to whether the non-admission of confessions derived from torture and other harsh treatment was fully effective.

34. It was not altogether clear from the report what restrictions were placed on pre-trial detention, but it seemed that such detention must not exceed 30 days in the case of ordinary offences and an additional 20 days, apparently to permit further investigations, where alleged offences under the National Security Law were involved. He commented that the lengthier period seemed hardly justifiable, given the experience, common to many countries, of the generally expeditious functioning of special investigatory agencies acting under national security laws.

35. As far as the Republic of Korea was concerned, it seemed to him that the central issue in the matter of guaranteeing the rights covered by the Covenant related to the actual status of the National Security Law, albeit in its amended, "milder" form. The principal concerns which it addressed, especially in relation to articles 15 and 19 of the Covenant, were defined in somewhat vague terms which, in his view, could lend themselves to interpretations inconsistent with the letter and spirit of the Covenant and result in sanctions for acts that might not be truly dangerous for the State, criminal

or even reprehensible, as well as undue restrictions on the freedom of expression, association and assembly. Further, as Mr. Ando had observed, certain pressures seemed on occasion to be applied to obtain the recantation of beliefs and other unseemly actions taken to inquire into people's thoughts. "Preventive" censorship in the form of banning certain forms of expression also appeard to be practised.

36. In conclusion, and notwithstanding the anxiety which he had expressed with regard to the overall impact of the National Security Law, he acknowledged that the comprehensive report before the Committee reflected a sincere endeavour to provide information about positive developments following a period during which the country's very existence had indeed been threatened. He commended its systematic presentation and expressed the view that it would be of great assistance to the Committee and the delegation of the Republic of Korea alike in what he hoped would be a constructive dialogue.

37. Mr. AGUILAR URBINA joined in commending what he found to be a well-prepared report, likely to stimulate useful dialogue. Like the earlier speakers, however, it left him with a number of questions and doubts, more specificially because of its relative failure to describe the actual situation obtaining in the country.

38. Noting with interest, like the previous speaker, the statement that the Covenant had the same effect as domestic laws without the enactment of separate domestic legislation (para. 5), he asked whether its provisions had in fact been applied or invoked before the courts. Notwithstanding the statement he had alluded to, could a national law in any way derogate from a provision of the Covenant?

39. Those concerns, which centred on the general status of the Covenant in relation to the legislation of the Republic of Korea, also prompted him to seek further clarifications with regard to the National Security Law as well as other enactments which affected a number of the Covenant's provisions. He noted that a number of non-governmental organizations claimed that the National Security Law was, in effect, the country's Constitution.

40. Article 11 (1) of the Constitution prohibited discrimination on various grounds which, however, seemed to be more limited than those laid down in the Covenant (para. 29 of the report). He would welcome more information on that point. Paragraph 44 of the report said that foreigners were not allowed to hold public office; did that apply to all public posts, without exception?

41. Paragraph 48 of the report stated that any law relating to criminal penalties which was found to be unconstitutional would be declared null and void. What consequences had that provision had? Did it, for example, apply to the National Security Law, whose scope had now been restricted? He would also like to know whether prosecutors were subject to executive or to judicial authority.

42. Turning to article 3 on equality of rights between men and women, he noted from paragraph 67 of the report that prostitution was a criminal offence in the Republic of Korea. He would like to know whether the procurement of women for prostitution was also a criminal offence. Paragraph 69, dealing

with the participation of women in society, stated that women and men had enjoyed equal political rights since the establishment of the "Korean Government". Why was the reference to the "Korean Government", rather than the "Korean State"? Paragraphs 73 and 74 dealt with the position of women in the legal profession and political life: he inquired whether there were any laws to protect women against discrimination in those fields.

43. With reference to article 4 of the Covenant, he noted that, under the Constitution of the Republic of Korea, the President was empowered to enforce emergency measures only during the period when the survival of the State was at stake (para. 92 of the report). That was surely a very vague concept; it might even be interpreted to mean that emergency measures could be prolonged until the two halves of the Korean nation had been reunited. Under article 76 (1) of the Constitution, the President could assume emergency powers in circumstances rather more wide-ranging than those laid down in the Covenant (para. 90 of the report). Would the provisions of the Covenant take precedence over the Constitution in such a case, and would the Covenant be applicable directly or only through the courts? To what extent were article 76 of the Constitution, and also article 37 (2), (which dealt with admissible restrictions on the rights of citizens), compatible with the Covenant?

44. In respect of article 6 of the Covenant, dealing with the right to life, he noted that a large number of offences carried the death penalty in the Republic of Korea. Paragraph 103 stated that the death penalty could be imposed under the Criminal Code and "the other related regulations", and he would welcome more details about the latter. In the same paragraph, it was stated that the death penalty was limited to crimes which threatened "the very existence of the State"; he would like to know exactly which crimes were involved. In that connection, he understood that as many as 50 offences under the National Security Law were subject to the death penalty. He was concerned to read in paragraph 109 of the report that the death penalty could be imposed for robbery. Moreover, there had been no successful appeals against death sentences since 1986 (para. 108 of the report). He would welcome more information about the statement in paragraph 113 that "the detention of persons sentenced to death is to secure the execution of the death penalty".

45. Paragraph 125 of the report described possible limitations on the rights of people suffering from three categories of communicable diseases. He would like to know how the rights of those people were restricted in practice.

46. Turning to article 7 of the Covenant, he asked for more information about the decision of 1981 in which the Supreme Court had rejected a confession made under duress (para. 138 of the report). According to information he had received, there had been other cases where defendants had been tortured or otherwise ill-treated in order to extract a confession.

47. In respect of article 8 of the Covenant, he noted that it was a criminal offence to kidnap a person in order to take him out of the country (para. 141 of the report). He would like to know whether kidnapping alone was also a criminal offence. Paragraph 146 stated that the right of conscientious

objection to military service was not included in the right to freedom of conscience under the Constitution, and he would welcome more information on that point.

48. With reference to article 9 of the Covenant, he asked how many political prisoners there were in the Republic of Korea; according to information in his possession, they numbered some 1,300. Article 12 (1) of the Constitution referred to "preventive restrictions" which might be imposed in certain circumstances; what were those restrictions? He was concerned to note that people suspected of an offence under the National Security Law could be detained without trial for up to 150 days. How was a prisoner's welfare guaranteed during that time?

49. In respect of article 10 of the Covenant, he would like to know whether there were different categories of prisoner, and whether a prisoner might be transferred from one category to another, depending perhaps on his degree of ideological rehabilitation. What were the regulations governing solitary confinement?

50. He noted that the section of the report dealing with article 12 of the Covenant (paras. 192 and 193) made no mention of the Resident Registration Law (para. 227). What were the provisions of that Law, and was it connected with the Security Surveillance Law, under which anyone suspected of offences under the National Security Law could be kept under surveillance for up to two years?

51. In respect of article 14 of the Covenant, he noted that, under the Constitution of the Republic of Korea, defendants had the right to a prompt trial (para. 200). However, undue haste might prevent the defendant from adequately preparing his defence. What were the practical effects of that provision? Paragraph 204 said that the State would appoint a defence counsel if the defendant was unable to do so but, in that case, was extra time allowed for the defence counsel to prepare the case? It appeared that the accused had no automatic right to question witnesses: indeed, the accused might be excluded from the court in some circumstances, which would preclude him from cross-examining the witness, even if permission was granted. He would welcome more information on that point and also on the imposition of the death penalty by military courts.

52. In regard to article 18 of the Covenant, dealing with freedom of thought, conscience and religion, he inquired whether anyone had been coerced into renouncing a belief in Communism in the Republic of Korea. He was concerned about the provisions of article 2 (1) of the National Security Law and wondered how far it was compatible with the provisions of the Covenant.

53. Finally, he would like more details about the restrictions on political activity by people who had been declared incompetent (para. 306). It was further stated that certain teachers and journalists were forbidden to found or join a political party and that new parties could not be established with the same political platform as a party which had been banned (para. 308). Which parties had already been banned, and why?

54. Mr. EL SHAFEI welcomed the Republic of Korea's accession to the International Covenants on Human Rights and the Optional Protocol. The report

was a detailed one, which acknowledged the restriction of some fundamental rights in the Republic of Korea, but it did not tell the whole story. Admittedly, the country had been seriously affected by the cold war over a long period and had suffered bouts of insurgency, but they had been met by excessive and arbitrary use of force and by ill-treatment, torture and the abuse of authority to an extent which was unacceptable in a democratic country. It was to be hoped that the new attitude displayed by the Government of the Republic of Korea, as shown by its accession to the international human rights instruments and its presence at the current session of the Committee, meant that the excesses of the past would never be repeated.

55. The Committee's main concern in considering the report was to establish how the legislation of the Republic of Korea could be made more compatible with the provisions of the Covenant. He would like to hear more about developments since the submission of the report which would show the Government's commitment to such changes.

56. He inquired whether there was a State body responsible for the protection of human rights. Moreover, the delegation had stated that the Covenant had the same force as domestic law in the Republic of Korea. What happened in cases of infringement of rights guaranteed by the Covenant but not recognized under domestic law? He asked whether there had been any court decisions based directly on the provisions of the Covenant. He would also like more details about measures to guarantee the independence of judges, particularly the regulations governing their appointment, tenure and removal.

57. It seemed that the Constitutional Court could only rule on the constitutionality of a law on the basis of a decision by a lower court: could it also consider allegations of unconstitutionality submitted by individuals? He hoped that the Government would soon take action to make several of its laws, including the National Security Law, the Security Surveillance Law, the Labour Dispute Adjustment Act and the Act concerning Assembly and Demonstration, more compatible with the Covenant. He could see that such provisions had been necessary in the past, but the time had surely come to amend or repeal them.

58. Mr. MAVROMMATIS said that there had clearly been considerable progress in the protection and promotion of human rights in the Republic of Korea since the end of the cold war. Nevertheless, the Committee had received allegations of a large number of violations, particularly in respect of relations between the two Korean States, the rights of long-term political prisoners, the right to a fair trial, the presumption of innocence and freedom of expression. However, the Government's determination to tackle the problems had been demonstrated by its accession to the Optional Protocol to the International Covenant on Civil and Political Rights. The report before the Committee was a good one but, like many others, it made general statements without backing them up with specific facts and gave no details of the actual situation in the country or of difficulties in implementing the provisions of the Covenant. For example, the report stated that the Constitution did not conflict with the Covenant (para. 6), but it made no mention of other legislation. The Covenant had the same force as domestic law without any need for specific domestic legislation to that effect (para. 5), but he wondered how that principle applied to the non-self-executing provisions of the Covenant.

59. Article 11 (1) of the Constitution prohibited discrimination on a number of grounds (para. 29), but they did not include such fundamental criteria as race, colour, birth and, in particular, political belief, and he felt that the list should be enlarged.

60. There were a number of other points on which additional information was needed. In regard to the punishability of offences, for example, article 1 (1) of the Criminal Code seemed to contradict article 15 of the Covenant. With regard to the imposition of the death penalty, an explanation was needed of the various degrees of murder, not all of which could be considered as heinous crimes justifying the imposition of the death penalty. More detailed information was required regarding means of securing the independence of the judiciary: did judges enjoy security of tenure, were their emoluments safeguarded, did they had the right to resign from office, were they immune from civil charges in respect of their duties, and so forth? The importance of elaborate provisions for ensuring the independence of the judiciary could not be overemphasized. It would also be useful to have an explanation of the national legal structure, the jurisdiction and competence of the various courts, their hierarchical relationship and the right of appeal.

61. In regard to article 25 of the Covenant, the unexplained provision in the Political Party Act prohibiting certain teachers and journalists from becoming founders or members of a political party seemed to contradict not only the Covenant but also article 13 (2) of the Constitution of the Republic of Korea. It was important to know whether it was the Constitution or the Political Party Act that prevailed.

62. Finally, the report seemed to make a rather restricted interpretation of religious and cultural minorities. It would be interesting to have more information about the country's religious composition.

63. Mr. MYULLERSON expressed appreciation of the efforts made in the Republic of Korea in recent years to promote human rights. The Government's initial report, which had been drafted in accordance with the Committee's guidelines, contained a great deal of useful information. There were, however, certain gaps that should be mentioned.

64. The statement in the report on the right of peoples to self-determination was an instance in which further information was needed. The right of peoples to self-determination covered not only their right to found independent States but also their entitlement to democracy and to choose their own economic, social, political and cultural system. He wondered what the views of the Republic of Korea were in that respect. In connection with the references in the report to Palestine and South Africa, he noted that Korea was itself a divided country and that problems of self-determination were very topical, given the movement towards reunification. It had been reported in the media that the conditions put forward by North Korea for reunification were not acceptable to the Government of the Republic of Korea. It would be interesting to hear the Government's own conditions.

65. In regard to paragraph 29 of the report, he wondered why article 11 (1) of the Constitution mentioned only three grounds of discrimination. No mention was made, for example, of religion or political opinion, as referred to in the Covenant.

66. Paragraph 89 of the report, on emergency actions and orders and the possible proclamation of martial law, stated that article 37 (2) of the Constitution provided that restrictions on the freedom of citizens could not infringe on the essential aspects of fundamental rights. It did not, however, define those essential aspects. Paragraph 93 referred to control over the exercise of emergency powers but did not define the powers of the President or say what control was exercised over his powers.

67. Paragraph 149 of the report, on article 9 of the Covenant, described the rather wide grounds on which detention without a warrant was permitted, including violations of the National Security Law. The provision for extending the period of detention, referred to in paragraph 154, would appear to violate the presumption of innocence.

68. Regarding article 12 of the Covenant and the right of citizens to move freely, he asked whether there were any restrictions on visits by citizens of the Republic of Korea to North Korea. He also asked for further information on the term of office of judges. He believed that the Government had recently granted longer terms than the customary 10 years and noted that life tenure was one of the best guarantees of an independent judiciary. Regarding the reference to military courts in paragraph 211, he asked what categories of cases were tried by such courts and what was the meaning of the term "extraordinary law".

69. The application of the National Security Law gave him some concern. While he understood the raison d'être for the Law, he felt that the recent changes in the overall situation might have made it seem less necessary. Apparently, the Law was used not only against agents of North Korea but also against critics of the Government of the Republic of Korea, the simple possession of Marxist literature being regarded as grounds for imprisonment.

70. Mr. SADI said that the presentation of the report constituted a dramatic break with the past and the start of a new era in the Republic of Korea. He had been particularly impressed by the inclusion in the delegation of the Director of the Human Rights Division of the Ministry of Justice.

71. He understood that the preparation of the report had generated considerable publicity within the country. Such publicity would help to guarantee the implementation of the Convenant and he would welcome further information on the attention given to it. It was important for such publicity to be directed to the public at large as well as to professional legal circles. He wondered whether the situation had changed perceptibly since the Government had ratified the Covenant. Detailed information on the number of times it had been invoked would enable the Committee to establish a link with the general evolution of the human rights situation in the country.

72. Broad concern had been expressed by several members of the Committee about the application of the National Security Law. He understood that its application was subject to judicial review but wondered how far the courts were able to control it. Apparently, the Supreme Court was not empowered to decide on the legality of martial law.

73. He hoped that the Government would shortly be able to withdraw its reservations to articles 14 and 22 of the Covenant. It had been said that the Confucian tradition prevailing in the Republic of Korea made it difficult for the Government to meet some of its treaty obligations, particularly in respect of discrimination against women. Other countries with strong religious traditions had encountered similar problems and further information on the evolution of the situation and the course of public opinion would be useful to those countries.

74. Miss CHANET commended the report for its full and detailed account of constitutional protection for civil and political rights and measures to ensure the implementation of the Covenant, but regretted the absence of information on the day-to-day difficulties encountered in promoting respect for human rights.

75. She associated herself with the questions asked by previous speakers about the hierarchy between the provisions of the Covenant and those of the Constitution. She welcomed the Government's withdrawal of its reservation to article 23 and hoped that those to articles 14 and 22 would also be withdrawn shortly. She noted that the reservations were drafted in very broad terms although, according to the report, they applied to very specific cases: certain procedures in military trials which could not be appealed against except in the case of death sentences, and restrictions on the trade union rights of public officials. It ought to be possible to cover those two exceptions without having to enter a reservation in respect of the articles as a whole.

76. She would welcome more information on the structure of the judiciary, including the training and recruitment of judges and arrangements for disciplinary action against them where necessary.

77. Parag aph 18 of the report referred to the Government's efforts to make the contents of the Covenant fully understood, particularly by public officials. She would welcome more information on the way the Government intended to inform the public in general of the provisions and spirit of the Covenant.

78. She noted from paragraph 48, on the remedies for the infringement of rights guaranteed by the Constitution, that in cases where the Constitutional Court ruled in favour of the petition, new action had to be taken in accordance with the decision. She asked how many such cases had occurred. She would also like an explanation of the term "reasonable discrimination" used in paragraph 35.

79. In connection with article 4 of the Covenant, paragraph 94 of the report said that the restrictions on fundamental rights in the case of an emergency did not refer explicitly to the absolute fundamental rights of article 4 of

the Covenant but to the "essential" aspect of the freedoms or rights referred to in the Constitution. She asked whether certain fundamental rights, such as the right to life or freedom from torture, could in fact be suspended during an emergency. She had a similar question in regard to article 6 and the death penalty. She recalled that it was the Committee's view that the death penalty should be exceptional and applied only in the case of very serious crimes. Conceptions of what constituted a serious crime could differ. She would like to know, therefore, what crimes were still subject to the death penalty since the amendment of the Special Criminal Act.

80. Regarding article 9 of the Covenant, she would like more information on the role of the National Security Planning Agency. She asked whether the Agency was empowered to detain and interrogate suspects. According to information from non-governmental organizations, there had been instances in which persons had been held for a very long time without trial under the National Security Law. She asked whether there was any limit in the Law to the time of such detention. She noted that, according to paragraph 247 of the report, amendments had been adopted to the National Security Law in 1991 in order to reduce the scope of its application, and she wondered whether that might pose any problems in regard to article 15 of the Covenant. Another question in respect of the National Security Law arose under article 4 and the definition of espionage. The crime of the betrayal of secrets, as included in the Law, was extremely vague. In case law, the Supreme Court seemed to define as secret any political, social or economic information available. The revelation of such information could be regarded as a crime subject to the death penalty, which could in turn pose problems in regard to articles 15, 18 and 19 of the Covenant. Concerning article 14, the report stated that a confession under torture was not to be admitted as evidence of guilt. According to Amnesty International, however, a person was currently serving a sentence of life imprisonment by reason of such a confession. She asked whether the delegation could confirm or deny the report. She noted that paragraph 242 stated that one of the purposes of the Broadcasting Act was "to help the formation of public opinion" and asked for an explanation of that phrase. She wondered whether efforts to promote anti-communism were still current in the Republic of Korea despite the changes that had taken place in the world.

The meeting rose at 6 p.m.